

(2001) 09 AP CK 0136
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1359 of 2000

Chalavadi Koti Suryam

APPELLANT

Vs

Immadi Ramachandrda Rao

RESPONDENT

Date of Decision : 19-09-2001

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2)
Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10

Citation : (2002) 1 ALD 775 Supp : (2002) 1 AnWR 54

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; P.R. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The unsuccessful tenant in both the courts below is the revision petitioner. The respondent-landlord filed the petition u/s 10(2)(ii)(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (herein after referred to as the Act, for brevity). The respondent in the revision petition is the landlord. The parties hereafter will be referred to as landlord and tenant for the purpose of convenience.

2. The landlord filed the eviction petition RCC.No.53 of 1994, which was renumbered as RCC.No.205 of 1996 on the file of the learned Rent Controller, Vijayawada u/s 10(2)(ii)(b) of the Act. The petition schedule premises was let out to the tenant for residential purpose on a monthly rent of Rs.305.00 payable by the end of the very month. On the ground of willful default in payment of the rent the eviction petition was filed and the court had passed the eviction order and the tenant shifted his residence from the schedule premises to Ksheerasagaram Buildings, D.No.27-37-123, first floor, converting the schedule premises for keeping his business material and using the same for non residential purpose. Thus the tenant had changed the purpose of the lease and

he is not paying the monthly rentals even through the rent control proceedings are pending against him. He has been paying the rents once in three or four months at his will and pleasure.

3. The tenant had filed counter denying all the allegations and contending that he had never committed default in payment of rents, that the allegations made in RCC.No.53 of 1994 are not correct and that he has not shifted his residence from the schedule premises to Ksheerasagaram Buildings. He also denied the allegation relating to the change in user of the building. It was also further alleged that he has been paying rents regularly and he is not using the premises for a different purpose as alleged by the landlord.

4. On behalf of the landlord, he has examined himself as PW-1 and on behalf of the tenant, he had examined, himself as RW-1.

5. The learned Rent controller after appreciating the evidence available on record had arrived at a conclusion that the landlord is entitled to the relief as prayed for. Aggrieved by the same the tenant had preferred RCCMA.No. 63 of 1998 on the file of the learned Principal Senior Civil Judge, Vijayawada, the appellate authority under the Act. The appellate authority by order dated:14-2-2000 had dismissed the appeal and aggrieved by the same the tenant had filed the present civil revision petition.

6. Sri M.V.S. Suresh Kumar, learned counsel representing the revision petitioner had contended that the courts below had not properly appreciated the scope and ambit of the provisions of the Act dealing with the change of user. The learned counsel also had contended that the courts below had failed to see that there was no evidence on record to the effect that the tenant was using the premises for the purpose other than for which it was leased out and without there being any evidence to that effect, the eviction petition of the landlord cannot be sustained. Hence the impugned order is not sustainable.

7. Learned counsel also contended that the courts below had failed to see that the Commissioner cannot cull out the evidence and the facts which are in dispute and this aspect should be established by an independent evidence. Hence in the absence of the same the relief of eviction cannot be granted to the landlord.

8. Sri P.R. Prasad, learned counsel representing the respondent in the CRP, i.e., the landlord had contended that clear evidence is let in regarding the change in user and there was a detailed discussion about the evidence of PW-1 and RW-1 and also the report of the authorized person and hence both the courts below has recorded a concurrent finding to the fact relating to the change of user and hence such findings cannot be interfered with.

9. Heard both sides and perused the material available on record.

10. Section 10(2)(ii)(b) of the Act specifies "use of the building for a purpose other than that for which it was leased".

11. The appellate authority, apart from appreciating the evidence of PW-1 and RW-1, while dealing with the report of the authorized person, had observed:

"In this case, the landlord got appointed an authorized person for the purpose of noting the physical features on the demised premises. The commissioner was appointed. In due obedience of the warrant issued by the court, the commissioner visited the tenanted premises on 28-4-1994. It is necessary at this stage to note the directions of the warrant. As seen from the warrant entrusted to the commissioner shows that the commissioner is directed to note down whether the schedule premises is used for residential purpose or there are any business, material dumped and also to note down whether the respondent is residing at Door No.27-37-123, Ksheerasagaram Building, Bundar Road, Vijayawada. The Commissioner was appointed on 27-4-1994. On the next day i.e., 28-4-1994, he visited the premises. He filed his interim report what all happened on that day at the demised premises. It is necessary to note relevant facts from the interim report filed by the Commissioner as follows:

"I intended to execute the warrant on 28-4-1994 at 8-00 AM. Accordingly I prepared a notice and gave a copy of the same to the petitioner's Advocate. While taking me to the schedule property, the petitioner's Advocate Sri S. Rajasekhar has shown me the respondent who is standing in the balcony-cum-varandah of the building bearing the Door No.27-37-123 in Bandar Road and asked me to give notice to him. Then I asked him to show me the schedule property first. Then I am taken to the schedule property. It is found under lock and key. As such after giving notice to the petitioner's Advocate, I have approached the respondent's place bearing the Door No.27-37-123 along with petitioner's Advocate. By the time we approached the house, the respondent got down and talking to a rickshaw puller. His son-in-law has shown the respondent talking a rickshaw puller and from there he called his father-in-law and shown us saying that we came for him. Then I and the petitioner's Advocate came down from the building and approached the respondent and asked him to receive the notice and to open the locks of the schedule property and to show the same to me. Then he requested me to execute the warrant in the evening so that he can take the advice of his Advocate and bring him to the work spot. Then I have asked him to cooperate with me in executing the warrant and I will give him one-hour time to get his Advocate. But he refused to receive the notice and told that what I will note in the schedule property which is almost vacant excepting some wooden and card board material lying in the schedule property. Then the petitioner's Advocate requested to execute the warrant immediately expressing his apprehension that if the time is given till evening they will dump in some household articles into the property and change the physical features and filed a memo to that effect. Then I requested the respondent to come and open the doors of the schedule property saying that I cannot give time to him and also said that I will note down what he told previously if he fails to open the doors of the schedule property, then the respondent has directed his son by name Prasad, who also came there to bring the keys of the schedule property. Then his son

went to the upstairs of the building bearing Door. No.27-37-123 to bring the keys of the schedule property and the respondent took us to the schedule property which is about 1/2 furlong from there. After we reached the schedule property, the respondent went to telephone booth and had a talk with his advocate. Then he returned. By the time the respondent returned his son by name Prasad came there and represented that their Advocate advised them not to open the locks. The respondent who went to have a talk with his advocate on phone returned and he also told that his advocate has advised him not to open the locks and doors of the schedule property and requested me to come after some time as he is planning to go to Tirupathi today night and he will be busy in that connection.

As I thought fit to represent the actual things happened immediately to this Hon"ble court, I am filing this interim report."

12. The appellate court also observed:

"So as can be seen from the interim report, the appellant has not permitted the Commissioner to inspect the schedule property on the ground that this Advocate advised him not to open the locks and doors of the schedule property. There is no other reason explained for not opening the keys of the doors. So the appellant virtually prevented the Commissioner from inspecting the schedule premises. If really, the appellant was using the premises as residential house, there would not be any difficulty for him to open the keys and allow the commissioner to inspect the schedule premises. Had the building been opened on the earliest point of time that is on 28-4-1994, the real things would have been brought to light. The very purpose of which the Commissioner taken his defeated, as no purpose would be served by the reason that so many things would come into light during the span of time i.e., between 27-4-1994 to 7-6-1994. There is every possibility for the appellant to do whatever he likes and the possibility cannot be ruled out."

13. The Commissioner had pointed out the physical features of the demised premises in the final report dated:7-6-1994 and had mentioned all the facts which had happened in the interim report. In the final report, it is no doubt, stated that no business material was kept in the demises premises. The learned Rent controller had also taken into consideration the physical features pointed out by the Commissioner and the facts and the events which had happened on the date of the first visit of the Commissioner and basing on the interim report of the Commissioner, the trial court had ordered eviction holding that the tenant has been using the premises as a non residential premises by changing the user.

14. Order XXVI Rule 10 of the Code of Civil Procedure, 1908, reads as follows:

10) Procedure of Commissioner:

1. The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

2. Report and depositions to be evidence in suit: The report of the Commissioner

and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record,; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

3. Commissioner may be examined in person: Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

15. In *M.Chenna Venkata Reddy v. APHB, Gruhakalpa, Hyderabad*¹ it was observed:

Order 26 Rule 10 CPC, which deals with the procedure for issuance of Commission, says that the report filed by the Commissioner shall be evidence in the case and that the same shall form part of the records. It further allows the parties to examine the Commissioner personally in open Court, touching the matters regarding which reference is made in the report or in respect of the matters referred to him or in respect of those matters which were the subject matter of the issue."

16. It is needless to mention that the report of the Commissioner forms part and parcel of the record and hence both the courts below after recording the reasons in detail had arrived at a conclusion that there is change in user of the demised premises and hence the tenant is liable to be evicted. These are the findings of fact recorded by both the courts below based on evidence. Hence while exercising the revisional jurisdiction, I am not inclined to disturb the concurrent findings recorded by both the courts below.

17. For the reasons stated supra, the civil revision petition is devoid of merits and the same is accordingly dismissed. But, however, the tenant is granted four months time to vacate the schedule premises. No costs.